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6 UNITED STATES DISTRICT COURT
7 EASTERN DISTRICT OF WASHINGTON
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9 SARINA M. STRIPED-WOLF,

10 Plaintiff,

11 v.
12

13 CAROLYN W. COLVIN,
14 Commissioner of Social Security,

15 Defendant.
16

No. 2:12-CV-0572-JTR

ORDER GRANTING
DEFENDANT'S MOTION
FOR SUMMARY JUDGMENT

17
18 **BEFORE THE COURT** are Cross-Motions for Summary Judgment. ECF
19 No. 15, 17. Attorney Maureen J. Rosette represents Sabrina M. Striped-Wolf
20 (Plaintiff); Special Assistant United States Attorney Jeffrey R. McClain represents
21 the Commissioner of Social Security (Defendant). The parties have consented to
22 proceed before a magistrate judge. ECF No. 7. After reviewing the administrative
23 record and briefs filed by the parties, the Court **GRANTS** Defendant's Motion for
24 Summary Judgment and **DENIES** Plaintiff's Motion for Summary Judgment.

25 **JURISDICTION**

26 Plaintiff filed an application for Supplemental Security Income Benefits on
27 April 29, 2009, alleging disability since August 1, 2001, due to severe anxiety and
28 depression. Tr. 49, 173. The application was denied initially and upon

1 reconsideration. Administrative Law Judge (ALJ) Caroline Siderius held hearings
2 on November 16, 2010, and March 22, 2011, Tr. 42-58, 59-76, and issued an
3 unfavorable decision on April 7, 2011, Tr. 18-29. The Appeals Council denied
4 review on August 20, 2012. Tr. 1-6. The ALJ's April 2011 decision became the
5 final decision of the Commissioner, which is appealable to the district court
6 pursuant to 42 U.S.C. § 405(g). Plaintiff filed this action for judicial review on
7 October 15, 2012. ECF No. 1, 5.

8 **STATEMENT OF FACTS**

9 The facts of the case are set forth in the administrative hearing transcript, the
10 ALJ's decision, and the briefs of the parties. They are only briefly summarized
11 here.

12 Plaintiff was born on August 29, 1975, and was 25 years old on the alleged
13 onset date, August 1, 2001. Tr. 173. She completed high school and also has
14 special job training in broadcasting from the Spokane Skills Center. Tr. 194.
15 Plaintiff indicated she stopped working on August 1, 2002, because she could not
16 force herself to work anymore. Tr. 189. She stated she is unable to go back to
17 work due to severe depression which causes her to anger easily and have a lack of
18 energy, extreme fatigue, and difficulty getting out of bed in the mornings. Tr. 189.
19 She testified at the administrative hearing she cannot be around large groups of
20 people and has "panic attacks" where she will hyperventilate and feel unable to
21 breathe. Tr. 49. She stated she last worked as a cashier at a deli for four days in
22 2005. Tr. 46-47.

23 Plaintiff testified that she started using marijuana and methamphetamine
24 when she was 21, in 1996, and used those drugs continuously until 2006. Tr. 53.
25 As a result of her drug use and domestic violence issues, her children were taken
26 away from her by Child Protective Services and eventually adopted by another
27 family. Tr. 48, 54. Plaintiff reported she completed drug treatment and has been
28 clean since 2006. Tr. 48. The evidence of record, however, demonstrates that she

1 did not complete treatment, Tr. 508, and continued to use methamphetamines in
2 late 2008. Tr. 481, 505. In a function report Plaintiff completed in September
3 2006, Plaintiff indicated she was able to cook, clean, do laundry and care for her
4 two children, one of which was a newborn at that time. Tr. 200-202.

5 Kent Layton, Ph.D., testified as a medical expert at the hearing held on
6 March 8, 2011. Tr. 62-70. Dr. Layton summarized Plaintiff's medical history, Tr.
7 65-68, and indicated the most recent medical information was similar to his
8 opinion regarding Plaintiff: "she has problems socially," Tr. 67. He opined that
9 when Plaintiff is compliant with her medications, and off drugs, she does pretty
10 well. Tr. 68. Dr. Layton stated that self-medicating with drugs and non-
11 compliance with treatment medications exacerbates all of her symptoms. Tr. 68.
12 Dr. Layton found that Plaintiff had marked social limitations, noting that "social"
13 is by far her worst impairment. Tr. 67-68. He indicated Plaintiff's ability to
14 interact appropriately with the general public would most likely be markedly
15 impaired. Tr. 68. He further opined that Plaintiff's ability to ask simple questions
16 and request assistance would be moderately limited, to accept instructions and
17 respond to public criticism would be moderately limited, to get along with co-
18 workers would be moderately limited and to "maintain a social appropriate
19 behavior and basic standards of neatness, none." Tr. 69.

20 ADMINISTRATIVE DECISION

21 The ALJ found that Plaintiff had not engaged in substantial gainful activity
22 since April 29, 2009, the application date.¹ Tr. 20. The ALJ determined, at step
23 two, that Plaintiff had the following severe impairments: depression, anxiety,
24 personality disorders and obesity. Tr. 20. At step three, the ALJ found Plaintiff's
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26 ¹Although Plaintiff alleges a disability onset date of August 1, 2001,
27 Supplemental Security Income Benefits are not payable prior to the month
28 following the month in which the application was filed. 20 C.F.R. § 416.335.

1 severe impairments did not meet or medically equal a listed impairment. Tr. 20.
2 The ALJ assessed Plaintiff's RFC and determined she could perform medium
3 exertion level work with the following limitations: she can stand/walk up to 6
4 hours a day; sit up to 6 hours a day; needs to change positions once an hour; cannot
5 use ladders, ropes and scaffolds; would be capable of one to three step tasks; could
6 have no more than average production requirements; could have only superficial
7 contact with the public, co-workers, and supervisors; and could only mainly work
8 independently. Tr. 22.

9 At step four, the ALJ concluded Plaintiff was unable to perform any of her
10 past relevant work. Tr. 28. At step five, the ALJ found that, considering
11 Plaintiff's age, education, work experience and RFC, and based on the testimony
12 of the vocational expert, Plaintiff was able to perform work existing in significant
13 numbers in the national economy. Tr. 28-29. The ALJ thus determined that
14 Plaintiff was not under a disability within the meaning of the Social Security Act at
15 any time from April 29, 2009, the application date, through the date of the ALJ's
16 decision, April 7, 2011. Tr. 29.

17 STANDARD OF REVIEW

18 In *Edlund v. Massanari*, 253 F.3d 1152, 1156 (9th Cir. 2001), the Court set
19 out the standard of review:

20 A district court's order upholding the Commissioner's denial of benefits is
21 reviewed de novo. *Harman v. Apfel*, 211 F.3d 1172, 1174 (9th Cir. 2000). The
22 decision of the Commissioner may be reversed only if it is not supported by
23 substantial evidence or if it is based on legal error. *Tackett v. Apfel*, 180 F.3d
24 1094, 1097 (9th Cir. 1999). Substantial evidence is defined as being more than a
25 mere scintilla, but less than a preponderance. *Id.* at 1098. Put another way,
26 substantial evidence is such relevant evidence as a reasonable mind might accept
27 as adequate to support a conclusion. *Richardson v. Perales*, 402 U.S. 389, 401
28 (1971). If the evidence is susceptible to more than one rational interpretation, the

1 Court may not substitute its judgment for that of the Commissioner. *Tackett*, 180
2 F.3d at 1097; *Morgan v. Commissioner of Social Sec. Admin.*, 169 F.3d 595, 599
3 (9th Cir. 1999).

4 The ALJ is responsible for determining credibility, resolving conflicts in
5 medical testimony, and resolving ambiguities. *Andrews v. Shalala*, 53 F.3d 1035,
6 1039 (9th Cir. 1995). The ALJ's determinations of law are reviewed de novo,
7 although deference is owed to a reasonable construction of the applicable statutes.
8 *McNatt v. Apfel*, 201 F.3d 1084, 1087 (9th Cir. 2000).

9 It is the role of the trier of fact, not this Court, to resolve conflicts in
10 evidence. *Richardson*, 402 U.S. at 400. If evidence supports more than one
11 rational interpretation, the Court may not substitute its judgment for that of the
12 Commissioner. *Tackett*, 180 F.3d at 1097; *Allen v. Heckler*, 749 F.2d 577, 579
13 (9th Cir. 1984). Nevertheless, a decision supported by substantial evidence will
14 still be set aside if the proper legal standards were not applied in weighing the
15 evidence and making the decision. *Browner v. Secretary of Health and Human*
16 *Services*, 839 F.2d 432, 433 (9th Cir. 1988). If substantial evidence exists to
17 support the administrative findings, or if conflicting evidence exists that will
18 support a finding of either disability or non-disability, the Commissioner's
19 determination is conclusive. *Sprague v. Bowen*, 812 F.2d 1226, 1229-1230 (9th
20 Cir. 1987).

21 **SEQUENTIAL EVALUATION PROCESS**

22 The Commissioner has established a five-step sequential evaluation process
23 for determining whether a person is disabled. 20 C.F.R. §§ 404.1520(a),
24 416.920(a); *see Bowen v. Yuckert*, 482 U.S. 137, 140-142 (1987). In steps one
25 through four, the burden of proof rests upon the claimant to establish a prima facie
26 case of entitlement to disability benefits. *Tackett*, 180 F.3d at 1098-1099. This
27 burden is met once a claimant establishes that a physical or mental impairment
28 prevents him from engaging in his previous occupation. 20 C.F.R. §§

1 404.1520(a)(4), 416.920(a)(4). If a claimant cannot do his past relevant work, the
2 ALJ proceeds to step five, and the burden shifts to the Commissioner to show that
3 (1) the claimant can make an adjustment to other work; and (2) specific jobs exist
4 in the national economy which claimant can perform. *Batson v. Commissioner of*
5 *Social Sec. Admin.*, 359 F.3d 1190, 1193-1194 (2004). If a claimant cannot make
6 an adjustment to other work in the national economy, a finding of “disabled” is
7 made. 20 C.F.R. §§ 404.1520(a)(4)(i-v), 416.920(a)(4)(i-v).

8 ISSUES

9 The question presented is whether substantial evidence exists to support the
10 ALJ’s decision denying benefits and, if so, whether that decision is based on
11 proper legal standards.

12 Plaintiff contends the ALJ erred because she is more limited from a
13 psychological standpoint than what was determined by the ALJ. ECF No. 15 at 8.
14 Plaintiff specifically argues the ALJ failed to properly consider the opinions of the
15 medical expert and several examining medical professionals regarding Plaintiff’s
16 psychological limitations. ECF No. 15 at 8-15.

17 DISCUSSION

18 A. Plaintiff’s Credibility

19 While Plaintiff has not challenged the ALJ’s finding that Plaintiff is not fully
20 credible, Tr. 23, the undersigned finds the ALJ’s credibility determination
21 significant in this case.

22 Plaintiff was found by the ALJ to be not entirely credible, Tr. 23, and the
23 ALJ’s determination in this regard is uncontested by Plaintiff. *See Kim v. Kang*,
24 154 F.3d 996, 1000 (9th Cir. 1998); *United States v. Ullah*, 976 F.2d 509, 514 (9th
25 Cir. 1992) (holding that issues not specifically and distinctly contested in a party’s
26 opening brief are considered waived). Consequently, it is undisputed that the ALJ
27 properly determined Plaintiff was not fully credible in this matter. Since Plaintiff
28 was properly found by the ALJ to be not entirely credible, the ALJ appropriately

1 accorded little weight to medical reports based primarily on Plaintiff's subjective
2 complaints. *See Tonapetyan v. Halter*, 242 F.3d 1144, 1149 (9th Cir. 2001) (a
3 physician's opinion premised primarily on a claimant's subjective complaints may
4 be discounted where the record supports the ALJ's discounting of the claimant's
5 credibility); *Morgan v. Comm'r. of Soc. Sec. Admin.*, 169 F.3d 595, 602 (9th Cir.
6 1999) (the opinion of a physician premised to a large extent on a claimant's own
7 account of symptoms and limitations may be disregarded where they have been
8 properly discounted).

9 **B. Mental Limitations**

10 As noted above, Plaintiff's contention in this case is that the ALJ erred by
11 failing to accord proper weight to the opinions of the medical expert and several
12 other medical professionals regarding Plaintiff's psychological limitations. ECF
13 No. 15 at 8-15.

14 It is the responsibility of the ALJ to determine credibility, resolve conflicts
15 in medical testimony and resolve ambiguities. *Saelee v. Chater*, 94 F.3d 520, 522
16 (9th Cir. 1996). This Court has a limited role in determining whether the ALJ's
17 decision is supported by substantial evidence and may not substitute its own
18 judgment for that of the ALJ even if it might justifiably have reached a different
19 result upon de novo review. 42 U.S.C. § 405(g). When the ALJ has made specific
20 findings justifying a decision, and those findings are supported by substantial
21 evidence in the record, our role is not to second-guess that decision. *Fair v.*
22 *Bowen*, 885 F.2d 597, 604 (9th Cir. 1989).

23 The ALJ indicated that while the record reflects Plaintiff has difficulty
24 dealing with people, Plaintiff also reported she has a friend who checks on her
25 daily, she has lots of friends that call and visit her, and she goes to the store with
26 her sister-in-law on a regular basis. Tr. 21. The ALJ indicated this level of social
27 activity demonstrates Plaintiff is capable of sustaining personal relationships and
28 friendships. Tr. 21. The ALJ ultimately found that Plaintiff has moderate to

1 marked difficulties in social functioning. Tr. 21. These social limitations are
2 reflected in the ALJ's RFC determination which held that Plaintiff would be
3 capable of only one to three step tasks; could have no more than average
4 production requirements; could have only superficial contact with the public, co-
5 workers, and supervisors; and could only mainly work independently. Tr. 22.
6 The undersigned finds the ALJ's interpretation of the medical record is supported
7 by substantial evidence. *See infra*.

8 **1. Dr. Layton**

9 Dr. Layton testified as a medical expert at the administrative hearing. Tr.
10 62-70. Dr. Layton opined that when Plaintiff is compliant with her medications,
11 and off drugs, she does pretty well, but when Plaintiff is self-medicating with drugs
12 and non-compliant with treatment all of her symptoms are exacerbated. Tr. 68.
13 Dr. Layton found that Plaintiff had marked social limitations, noting that "social"
14 is by far her worst impairment. Tr. 67-68. He indicated Plaintiff's ability to
15 interact appropriately with the general public would most likely be markedly
16 impaired. Tr. 68. He further opined that Plaintiff's ability to ask simple questions
17 and request assistance would be moderately limited, to accept instructions and
18 respond to public criticism would be moderately limited, to get along with co-
19 workers would be moderately limited and "maintain a social appropriate behavior
20 and basic standards of neatness, none." Tr. 69.

21 The ALJ accorded Dr. Layton's testimony significant weight. Tr. 28. The
22 ALJ adopted Dr. Layton's conclusion of significant social limitations and
23 interpreted Dr. Layton's opinion as limiting Plaintiff to "superficial contact with
24 the public, co-workers and supervisors" and "mainly working independently." Tr.
25 21-22. When these limitations were presented to the vocational expert, the
26 vocational expert testified the hypothetical individual would be capable of
27 performing work existing in significant numbers in the national economy. Tr. 72-
28 74.

1 **2. Dr. Chandler**

2 On November 2, 2006, Plaintiff was examined by Samantha Chandler,
3 Psy.D. Tr. 369-372. Plaintiff complained she was depressed and indicated her
4 ability to work was affected because she has difficulty being around people. Tr.
5 369. At the consultative examination, Plaintiff denied drinking alcohol or using
6 drugs and reported CPS filed a dependency case on her children only because of
7 concerns about domestic violence, not due to drug abuse. Tr. 370. Plaintiff
8 indicated she spoke to her younger brother on the telephone daily and has lots of
9 friends that call her every day and come to visit a couple of times a week. Tr. 371.
10 Dr. Chandler diagnosed Depressive Disorder, NOS (by history, self-report), and
11 gave Plaintiff a Global Assessment of Functioning score of 61.² Tr. 372.

12 It was noted Plaintiff was able to follow through on many of her activities of
13 daily living, and she had frequent contact with friends and her brother. Tr. 372. It
14 was further noted that she was able to carry out simple, three step instructions and
15 interact appropriately with the examiner, but her **reported** problems with
16 authority, irritable presentation, and low motivation would adversely affect her
17 ability to secure and maintain a job, interact with the public and co-workers, and
18 respond appropriately to changes in the workplace. Tr. 372.

19 The parties' briefing fails to discuss Dr. Chandler's report, and the ALJ
20 accorded Dr. Chandler's opinion little weight as it was inconsistent with the
21 medical evidence and her findings on examination. Tr. 24. The ALJ noted that Dr.
22 Chandler reported Plaintiff could be misrepresenting her symptoms, but still based
23 her conclusions on Plaintiff's self-reports. Tr. 24. Nevertheless, Dr. Chandler's
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25 ²A GAF of 70-61 is characterized as: "Some mild symptoms or some
26 difficulty in social, occupational, or school functioning, but generally functioning
27 pretty well." Diagnostic and Statistical Manual of Mental Disorders 12 (3d ed.
28 Rev. 1987).

1 2006 report is informative as to Plaintiff's social functioning because it reveals
2 Plaintiff spoke to her younger brother on the telephone daily and had lots of friends
3 call her every day and come to visit a couple of times a week. Tr. 371.

4 **3. Drs. Mee and Gentile**

5 On November 16, 2006, state agency reviewing physician, Sean Mee, Ph.D.,
6 opined that Plaintiff was able to carry out simple, three step instructions, but her
7 ability to respond appropriately to changes in the work place would be affected and
8 working away from the public was recommended given Plaintiff's **self-reported**
9 problems with authority and low motivation. Tr. 376. Dr. Mee filled out a
10 Psychiatric Review Technique form indicating Plaintiff had mild restrictions of
11 activities of daily living, moderate difficulties in maintaining social functioning,
12 moderate difficulties in maintaining concentration, persistence or pace and no
13 episodes of decompensation. Tr. 388. On May 8, 2007, Mary A. Gentile, Ph.D.,
14 reviewed the record and affirmed Dr. Mee's opinion. Tr. 398.

15 Again, the parties do not discuss the opinions of Drs. Mee and Gentile. The
16 ALJ accorded these medical professionals "some weight" but noted the mild
17 limitations on activities of daily living was inconsistent with the medical evidence
18 which indicated Plaintiff had no limitations in this area. Tr. 25. The finding of
19 difficulties in maintaining social functioning, and thus the recommendation of
20 working away from the public, as well as the ability to carry out simple, three step
21 instructions was incorporated in the ALJ's RFC determination. Tr. 22.

22 **4. Mr. Knight**

23 On November 16, 2007, Plaintiff was examined by Michael Knight, MA,
24 LMHC. Tr. 440-444. Plaintiff reported to Mr. Knight that she had left her
25 previous jobs in fast food, nursing homes and gas stations because the work was

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1 redundant.³ Tr. 440. Plaintiff reported she had used methamphetamines for five
2 years but did not currently use the drug. Tr. 442. Mr. Knight indicated he believed
3 Plaintiff could be minimizing her drug and/or alcohol use. Tr. 442. Later medical
4 records reveal that Plaintiff continued to use methamphetamine until late 2008. Tr.
5 481 (November 2008), 505 (August 2008). Given Plaintiff's **report** of a history of
6 severe trauma and **reported** thoughts of suicide and taking the lives of her husband
7 and children, Mr. Knight diagnosed Major Depressive Disorder without psychotic
8 features; rule out postpartum depression; PTSD and Panic disorder with
9 Agoraphobia and assessed a GAF score of 45.⁴ Tr. 443-444. Mr. Knight indicated
10 on November 4, 2008, that Plaintiff had experienced a moderate decrease in
11 symptoms of depression and suicidal ideation. Tr. 436. It was noted that Plaintiff
12 did not follow through on treatment recommendations and had discontinued
13 therapy. Tr. 436.

14 The ALJ discussed Mr. Knight's records and specifically noted Mr. Knight's
15 report that Plaintiff did not follow through with treatment recommendations and
16 that Plaintiff could thus make no further progress on her issues. Tr. 23. Mr.
17 Knight's report is consistent with Dr. Layton's testimony, which the ALJ accorded
18 substantial weight, that when Plaintiff is non-compliant with treatment, and/or
19 using drugs, her symptoms are exacerbated. Tr. 68.

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22 ³Plaintiff's report of leaving previous jobs because she was bored with the
23 work is inconsistent with her claim of disabling limitations preventing her from
24 working.

25 ⁴A GAF of 50-41 reflects: "[s]erious symptoms (e.g., suicidal ideation,
26 severe obsessive rituals, frequent shoplifting) or any serious impairment in social,
27 occupational, or school functioning (e.g., no friends, unable to keep a job)."
28 Diagnostic and Statistical Manual of Mental Disorders-IV 32 (4th ed. 1994).

1 **5. Dr. Rosekrans' 2009 Evaluation**

2 On February 23, 2009, Plaintiff underwent a consultative examination with
3 Frank Rosekrans, Ph.D. Tr. 504-508. Plaintiff reported to Dr. Rosekrans that she
4 could not work because "I am severely depressed." Tr. 504. Plaintiff indicated she
5 used methamphetamines sporadically for 9 years, last using in August 2008. Tr.
6 505. She reported she lost custody of her two children due to domestic violence
7 and drug use in July 2007. Tr. 504. It was reported that after she lost custody of
8 her children, she stopped attending drug treatment because she no longer had a
9 reason to continue with the treatment. Tr. 504, 508. Dr. Rosekrans diagnosed
10 Major Depressive Disorder, Single Episode, Severe, Without Psychotic Features
11 and Amphetamine Dependence, Early Full Remission, and assessed a GAF score
12 of 55.⁵ Tr. 508. He indicated Plaintiff's depression could be related to her drug
13 use and opined that due to the severity of her depression, she was unlikely to be
14 able to work for the next six months.⁶ Tr. 508. Dr. Rosekrans additionally filled
15 out a Psychological/Psychiatric Evaluation form on February 23, 2009, which
16 indicated Plaintiff had a marked limitation on her ability to respond appropriately
17 to and tolerate the pressures and expectations of a normal work setting. Tr. 502.
18 However, Dr. Rosekrans again noted the limitations assessed on the form were
19 expected to last only a maximum of six months. Tr. 503.

20 In any event, the limitations assessed by Dr. Rosekrans in February 2009 are
21 not necessarily inconsistent with the ALJ's RFC determination in this case. First,
22 Dr. Rosekrans noted that Plaintiff failed to complete drug treatment because she

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24 ⁵A GAF of 60-51 reflects: Moderate symptoms or moderate difficulty in
25 social, occupational, or school functioning. Diagnostic and Statistical Manual of
26 Mental Disorders 32 (4th ed. 1994).

27 ⁶The assessed limitations would thus not meet the duration requirements of
28 the Act (one year). 42 U.S.C. § 1382c(a)(3)(A).

1 believed she no longer had a reason to continue with the program and that her
2 depression could be related to her drug use. Tr. 508. This report is consistent with
3 Dr. Layton's testimony, which the ALJ accorded significant weight, that when
4 Plaintiff is compliant with her treatment, and off drugs, she does pretty well. Tr.
5 68. Second, while Dr. Rosekrans' check-box form⁷ reflects a marked restriction,
6 his narrative report and GAF score indicate Plaintiff had only moderate restrictions
7 in functioning, a finding fairly consistent with the ALJ's determination.

8 **6. Dr. Quackenbush**

9 On March 6, 2009, Robert L. Quackenbush, Ph.D., completed a report
10 following a consultative examination of Plaintiff. Tr. 480-485. Plaintiff reported
11 a history of substance abuse that included "everything," but indicated she had not
12 used since November 2008. Tr. 481. Dr. Quackenbush indicated the results of the
13 psychological testing were not considered a valid representation of Plaintiff's true
14 capacities due to an exaggeration of deficits. Tr. 483-484. Nevertheless, Dr.
15 Quackenbush indicated Plaintiff's overall judgment appeared markedly limited by
16 personality variables, as well as potential substance use; she cannot manage stress
17 effectively and would be markedly limited in terms of adaptation to the strains of a
18 typical work setting; and she appeared severely limited socially. Tr. 485. Dr.
19 Quackenbush diagnosed Depressive Disorder, NOS; History of substance abuse;
20 and Personality Disorder, NOS, and assessed a GAF of 40.⁸ Tr. 484.

23 ⁷A check-box form is entitled to little weight. *Crane v. Shalala*, 76 F.3d
24 251, 253 (9th Cir. 1996) (stating that the ALJ's rejection of a check-off report that
25 did not contain an explanation of the bases for the conclusions made was
26 permissible).

27 ⁸A GAF of 40-31 indicates "[s]ome impairment in reality testing or
28 communication OR major impairment in several areas, such as work or school,

1 The ALJ gave “little weight” to Dr. Quackenbush’s opinions regarding
2 Plaintiff’s limitations, in light of Dr. Quackenbush’s conclusion that Plaintiff was
3 possibly exaggerating symptoms. Tr. 26, 483-484. Dr. Quackenbush noted that the
4 psychological tests he conducted were “not considered a valid representation of
5 [Plaintiff’s] true capabilities” and that her score on a memory test was “not
6 considered a valid estimate of [Plaintiff’s] abilities, as marked pain behaviors were
7 observed and several responses were suggestive of exaggeration.” Tr. 483-484. It
8 was proper for the ALJ to accord little weight to opinions based on test scores that
9 were deemed invalid.

10 The ALJ also specifically accorded no weight to Dr. Quackenbush’s opinion
11 regarding Plaintiff’s social limitations because they were based on Plaintiff’s self-
12 report and were inconsistent with other medical evidence of record demonstrating
13 Plaintiff had good friendships. Tr. 26. Dr. Quackenbush conducted only
14 psychological testing, which he concluded was not representative of Plaintiff’s true
15 capacities due to an exaggeration of deficits. Tr. 483-484. Therefore, the ALJ
16 reasonably inferred Dr. Quackenbush’s opinion of Plaintiff’s social limitations was
17 based only on Plaintiff’s self-reported symptoms. As stated in Section A, since
18 Plaintiff was properly found by the ALJ to be not entirely credible, the ALJ
19 appropriately accorded little weight to a medical opinion based on Plaintiff’s
20 subjective complaints. *See Tonapetyan*, 242 F.3d at 1149. The ALJ also
21 appropriately noted Dr. Quackenbush’s opinion that Plaintiff suffered from severe
22 social limitations was inconsistent with other medical evidence demonstrating
23 Plaintiff had good friendships: Dr. Chandler’s report that Plaintiff had lots of
24 friends call her every day and come to visit a couple of times a week. Tr. 26, 371.
25 The ALJ provided valid reasons, supported by the evidence of record, for

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27 family relations, judgment, thinking, or mood.” Diagnostic and Statistical Manual
28 of Mental Disorders 32 (4th ed. 1994).

1 according no weight to Dr. Quackenbush's opinion regarding Plaintiff's social
2 limitations.

3 **7. Dr. Everhart**

4 On October 23, 2009, Joyce Everhart, Ph.D., generated a report following a
5 consultative examination of Plaintiff. Tr. 449-454. Plaintiff reported to Dr.
6 Everhart that she was smoking marijuana twice a month and using
7 methamphetamine whenever she could in 2008. Tr. 450. She indicated she last
8 used marijuana about one year ago. Tr. 450. Plaintiff reported the main reason she
9 was unable to work is her anxiety. Tr. 452. Dr. Everhart diagnosed Depressive
10 Disorder, Not Otherwise Specified (NOS), currently mild, apparently treated with
11 medication; Polysubstance Abuse (cannabis, methamphetamine), in sustained full
12 remission as per self-report and Alcohol Abuse, in sustained full remission as per
13 self-report, but it was "not known if she is a credible witness with regard to drug
14 and alcohol history"; PTSD, chronic, delayed; Anxiety Disorder, NOS; and
15 Personality Disorder, NOS, with passive-aggressive and borderline features. Tr.
16 453. Dr. Everhart assessed a GAF of 55-60.⁹ Tr. 453. Dr. Everhart indicated
17 Plaintiff does not need help completing her activities of daily living; socially she
18 presented as mildly depressed; cooperation was minimal; test results did not
19 suggest difficulty with executive functioning; she was able to listen, understand,
20 remember and follow simple directions; her attention, concentration and
21 intellectual ability appeared to be within normal limits; her persistence and pace
22 were good; she did not appear easily distracted; and she remained on task. Tr. 453.
23 Dr. Everhart noted based on Plaintiff's "self-report" of difficulty leaving her house,
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26 ⁹A GAF of 60-51 reflects: Moderate symptoms or moderate difficulty in
27 social, occupational, or school functioning. See Diagnostic and Statistical Manual
28 of Mental Disorders 32 (4th ed. 1994).

1 Plaintiff may have some difficulty maintaining regular attendance during an eight-
2 hour day, 40-hour week. Tr. 453.

3 The ALJ gave Dr. Everhart's opinion, which is fairly consistent with the
4 ALJ's RFC assessment, "significant weight." Tr. 26. Although the ALJ did not
5 credit Dr. Everhart's finding that Plaintiff may have some difficulty maintaining
6 regular attendance during an eight-hour day, 40-hour week, Tr. 453, that
7 conclusion was based on Plaintiff's self-report of difficulty leaving her house. As
8 previously indicated, since Plaintiff was properly found by the ALJ to be not
9 entirely credible, it was appropriate for the ALJ to accord little weight to a medical
10 opinion based on Plaintiff's self-reported symptoms. *See Tonapetyan*, 242 F.3d at
11 1149. The ALJ appropriately rejected that portion of Dr. Everhart's opinion as
12 based on Plaintiff's non-credible self-report. Tr. 26.

13 **8. Drs. Gardner and Beaty**

14 On December 5, 2009, state agency reviewing physician, Jerry Gardner,
15 Ph.D., opined that Plaintiff would be capable of doing both simple and complex
16 tasks and would be able to interact appropriately with coworkers and the public on
17 a superficial basis, but her anxiety may occasionally interfere with attendance. Tr.
18 458. Dr. Gardner filled out a Psychiatric Review Technique form indicating
19 Plaintiff had moderate restrictions of activities of daily living, moderate difficulties
20 in maintaining social functioning, and mild difficulties in maintaining
21 concentration, persistence or pace. Tr. 470. On March 16, 2010, Edward Beaty,
22 Ph.D., reviewed the record and affirmed Dr. Gardner's opinion. Tr. 498.

23 The parties do not discuss the opinions of state agency reviewing physicians.
24 The ALJ accorded these medical professionals some weight but also noted the
25 opinion of moderate limitations on activities of daily living was inconsistent with
26 the medical evidence which indicated Plaintiff had no limitations in this area. Tr.
27 26-27. The findings of difficulties in maintaining social functioning, capability of
28 doing both simple and complex tasks, and ability to interact appropriately with

1 coworkers and the public on a superficial basis were included in the ALJ's RFC
2 determination. Tr. 22.

3 **9. Dr. Rosekrans' December 2010 Evaluation**

4 On December 16, 2010, Plaintiff was again examined by Dr. Rosekrans. Tr.
5 569-577. Dr. Rosekrans noted that little had changed and his diagnosis was the
6 same as his February 2009 evaluation. Tr. 569. However, on this occasion, Dr.
7 Rosekrans assessed a GAF of 40, indicative of major impairment in several areas.
8 Tr. 570. It was noted that Plaintiff was able to understand simple instructions; was
9 able to read and respond to questions; could understand, remember and carry out
10 simple instructions; and could be pleasant and cooperative. Tr. 571. Dr.
11 Rosekrans opined that Plaintiff had marked limitations in her abilities to
12 communicate and perform effectively in a work setting with public contact, to
13 communicate and perform effectively in a work setting with limited public contact,
14 and to maintain appropriate behavior in a work setting. Tr. 571.

15 The ALJ accorded Dr. Rosekrans' opinion "little weight," finding it was
16 based on Plaintiff's self-report and speculative, without mention of particular
17 evidence to support his conclusions. Tr. 27. The ALJ noted a review of Dr.
18 Rosekrans' report revealed subtle suggestions that Plaintiff attempted to portray
19 herself in a negative or pathological manner in particular areas. Tr. 27, 576. The
20 ALJ indicated Dr. Rosekrans concluded that some concern about distortion of the
21 clinical picture must be raised and the clinical hypotheses presented in the report
22 should be viewed with this in mind. Tr. 27, 575. Dr. Rosekrans further found that
23 the clinical scale elevations "may overrepresent the extent and degree of significant
24 test findings in certain areas" and that Plaintiff reported a level of depressive
25 symptomatology that was "unusual even in clinical samples." Tr. 27, 576. The
26 ALJ properly rejected Dr. Rosekrans' opinion for using tests that were potentially
27 impacted by Plaintiff's manipulation and for basing some of his findings on
28 Plaintiff's non-credible self-report.

As noted above, it is the responsibility of the ALJ to determine credibility, resolve conflicts in medical testimony and resolve ambiguities, *Saelee*, 94 F.3d at 522, and this Court may not substitute its own judgment for that of the ALJ, 42 U.S.C. § 405(g). Where, as here, the ALJ has made specific findings justifying a decision, and those findings are supported by substantial evidence in the record, our role is not to second-guess that decision. *Fair*, 885 F.2d at 604. Based on the foregoing, the ALJ did not err by disregarding those portions of the medical reports indicated above when formulating her hypothetical to the vocational expert, Ms. Jenni Lawson. The ALJ's rationale is supported by substantial record evidence. *Roberts*, 66 F.3d at 184. The weight of the record evidence supports the ALJ's ultimate determination in this case.

CONCLUSION

Having reviewed the record and the ALJ's findings, the Court concludes the ALJ's decision is supported by substantial evidence and is not based on legal error. Accordingly,

IT IS ORDERED:

1. Defendant's Motion for Summary Judgment, **ECF No. 17**, is **GRANTED**.
 2. Plaintiff's Motion for Summary Judgment, **ECF No. 15**, is **DENIED**.
- The District Court Executive is directed to file this Order and provide a copy to counsel for Plaintiff and Defendant. Judgment shall be entered for **DEFENDANT** and the file shall be **CLOSED**.

DATED January 9, 2014.



A handwritten signature in black ink, appearing to read "M" or "Rodgers".

JOHN T. RODGERS
UNITED STATES MAGISTRATE JUDGE